

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>KING DRUG COMPANY OF FLORENCE, INC., et al., on behalf of themselves and all others similarly situated,</b>  <b>Plaintiffs,</b>  <b>v.</b>  <b>CEPHALON, INC., et al.,</b>  <b>Defendants.</b>	<b>Civil Action No.</b>  <b>2:06-cv-01797-MSG</b>  <b>Judge Mitchell S. Goldberg</b>
<b>FEDERAL TRADE COMMISSION</b>  <b>Plaintiff,</b>  <b>v.</b>  <b>CEPHALON, INC.</b>  <b>Defendant.</b>	<b>Civil Action No.</b>  <b>08-CV-2141</b>

**NOTICE OF DIRECT PURCHASER PLAINTIFFS' POSITION  
WITH RESPECT TO DEFENDANT CEPHALON, INC.'S  
MOTION TO COMPEL PRODUCTION OF DOCUMENTS  
FROM PLAINTIFF FEDERAL TRADE COMMISSION  
AND THE MOTION OF THIRD-PARTY PHARMACEUTICAL  
COMPANIES' FOR PROTECTIVE ORDER**

The Direct Purchaser Plaintiffs<sup>1</sup> respectfully submit this Notice of Position with respect to Defendant Cephalon, Inc.'s Motion to Compel Production of Documents from Plaintiff Federal Trade Commission and the Motion of Third-Party Pharmaceutical Companies' for Protective Order (Dkt. Nos. 84 & 88). Direct Purchaser Plaintiffs respectfully advise the Court

<sup>1</sup> The Direct Purchaser Plaintiffs include all named plaintiffs in *King Drug Company of Florence, Inc. v. Cephalon, Inc.*, 2:06-cv-1797; *Rochester Drug Co-operative, Inc. v. Cephalon, Inc.* 2:06-cv-1868; *Meijer, Inc. v. Cephalon, Inc.*, 2:06-cv-1911; *Burlington Drug Co. v. Cephalon, Inc.*, 2:06-cv-3052; *JM Smith Corp. v. Cephalon, Inc.*, 2:06-cv-2146; *SAJ Distributors, Inc. v. Cephalon, Inc.*, 2:06-cv-3450; *Rite Aid Co. v. Cephalon, Inc.*, 2:09-cv-3956; *Walgreen Co. v. Cephalon, Inc.*, 2:09-cv-3956; and *Giant Eagle, Inc. v. Cephalon, Inc.*, 2:10-cv-5164.

that neither Cephalon nor the Third-Party Pharmaceutical Companies have sought any relief with respect to the Direct Purchaser Plaintiffs. Cephalon's prayer for relief is limited to requiring the Federal Trade Commission ("FTC") either to produce the documents underlying two studies<sup>2</sup> conducted by them or to stipulate that the FTC will not seek to offer the studies into evidence. Cephalon's Motion at 1. Similarly, the Third Party Pharmaceutical Companies' prayer for relief asks for a protective order barring the disclosure of confidential materials that the Third Parties and others have filed with the FTC. Third Party Pharmaceutical Companies' Motion at n. 3.

Because neither Cephalon nor the Third Party Pharmaceutical Companies has sought relief with respect to the private cases, the Court's decision on Cephalon's Motion and the Third Party Pharmaceutical Companies' Motion should be limited to the FTC case. The Direct Purchaser Plaintiffs should be permitted to use the FTC studies in any manner permitted by the law, and the admissibility of the studies in the private cases should be determined by the Court based on the evidentiary objections of the parties to those cases—not the arguments of third parties—and the Federal Rules of Evidence.

Dated: February 4, 2011

Respectfully submitted,

/s/ Joseph Oppen

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<sup>2</sup> The two studies are "Generic Drug Entry Prior to Patent Expiration" dated July 2002 and "Pay-for-Delay: How Drug Company Pay-Offs Cost Consumers Billions" dated January 2010.

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**CERTIFICATE PURSUANT TO FED. R. CIV. P. 37(a) and L.R. 26.1(f)**

I, Neill W. Clark, hereby certify that on February 4, 2011, I served Notice of Direct Purchaser Plaintiffs' Position With Respect to Defendant Cephalon, Inc.'s Motion to Compel Production of Document From Plaintiff Federal Trade Commission And the Motion of Third-Party Pharmaceutical Companies' for Protective Order on all parties via the CM/ECF system.

/s/ Neill W. Clark  
Neill W. Clark